

REMARKS

The Applicants respectfully request reconsideration in view of the following remarks and amendments. Claims 1-5 and 7-23 have been amended. Claim 6 has been cancelled. No claims have been added. Accordingly, claims 1-5 and 7-23 are pending in the Application.

I. Claim Objections

Claims 5-23 are objected to under 37 CFR 1.75(c) as being in improper form, because a multiple dependent claim cannot depend from another multiple dependent claim. However, the pending claims do not include any multiple dependent claims. Thus, the Applicants believe the Examiner has objected to these claims in error. If the Examiner maintains this rejection, the Applicants request that the Examiner specifically indicate which claims are believed to be multiple dependent claims. In view of the fact that there are no multiple dependent claims in the pending claims set, the Applicants respectfully request reconsideration and withdrawal of the objection to claims 5-23.

II. Claims Rejected under 35 USC 103(a)

Claims 1-23 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,445,602 issued to Grim ("Grim").

To determine obviousness of a claim: (1) factual findings must be made under the factors set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966); and (2) the analysis supporting the rejection under 35 U.S.C. § 103 should be made explicit and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See MPEP §§ 2141(II), 2141(III), and 2142; KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396; see e.g., MPEP § 2143 (providing a number of rationales which are consistent with the proper "functional approach" to the determination of obviousness as laid down in Graham).

In regard to claim 1, this claim has been amended to recite:

"A splint for a joint between two members of a human or animal body, ,
composed of

at least one rigid and globally concave shell (1, 2) that can be positioned around
the joint, resting on the joint, wherein the concave shell comprises a chamber (3, 4) made

of a flexible plastic material that can be pressurised by any appropriate means, on a concave inner face of the at least one concave shell, wherein the chamber is placed on the concave inner face of the concave shell (1, 2) to supply a supporting cushion between the concave shell (1, 2) and the joint, and the chamber covers at least a part of the concave inner face of the concave shell (1, 2), ; and

means (6) of holding the at least one concave shell (1, 2) in position around the joint, wherein the at least one concave shell (1, 2) is composed of a single element comprising a rigid part and at least one flexible area (7, 8; 12, 13) to avoid any injury to the oedematous tissue that developed subsequent to a severe or minor sprain of the joint, wherein the flexible area is made from a styrene ethylene butylene styrene (SEBS) block copolymer mixed with a rigid synthetic material from which the rigid part is made so that the shell is made from a single mould wherein the flexible area is chemically bonded to the rigid part of the shell (1, 2).”

These amendments are supported, for example, by original claim 6 which has been cancelled and page 5, lines 12-14 of the Specification. These amendments to claim 1 aim to clarify that the splint of claim 1 is made as a single element, (i.e. from a single mould) as is apparent from page 5, lines 12-14 of the Specification.

Specifically, claim 1 has been amended to specify how the chemical bonding is performed. More precisely, the flexible area is made from a styrene ethylene butylene styrene (SEBS) block copolymer mixed with a rigid synthetic material from which the rigid part is made. See Specification, Page 8, Lines 8-13. Use of these mixed materials enables the shell to be formed as a single element (i.e., made from a single mould), wherein the flexible area is chemically bonded to the rigid part. See Specification, Page 5, Lines 12-14. The Applicants submit that amended claim 1 is not disclosed by Grim.

The splint disclosed in Grim comprises a flexible area and a rigid part, which are bonded together so as to form a shell. Specifically, Grim discloses a splint having a rigid shell (18; 20) to which a flexible material is bonded to form a flexible padded material (95). Consequently, the flexible portion is a distinct element that is bonded to the rigid support member of the shell, by use of an adhesive or by thermal bonding. See Grim, Column 5, Lines 60-66. However, Grim does not teach or suggest chemical bonding so as to form a shell as a single element as recited in amended claim 1.

Having a shell composed of a single element is very advantageous. Indeed, as the shell is made of a single part and from a single mould, the flexible part of the shell does not tear off unlike devices disclosed by Grim. See Specification, Page 5, Lines 12-14. In Grim, a flexible

portion of the splint is a separate element bonded to the rigid shell and is thus likely to tear off. However, by chemically bonding these elements to form a single part, the splint of claim 1 avoids this problem. Therefore, Grim fails to teach or suggest a shell composed of a single element as recited in amended claim 1.

Additionally, the shell of claim 1 further improves the comfort for a user that is wearing the splint barefoot. See Specification, Page 5, lines 10-11. Specifically, the use of styrene ethylene butylene styrene (SEBS) improves the comfort level enjoyed by a user. Thus, the use of SEBS over other possible materials is not a design choice as argued by the Examiner but instead provides functional utility. However, Grim does not teach or suggest forming the shell from SEBS as recited in amended claim 1.

Based on the arguments presented above, Grim fails to teach or suggest each element of amended claim 1. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 on this basis.

Claim 22 has been amended to include elements analogous to those of amended claim 1. For at least the reasons discussed above in regard to the 35 U.S.C. § 103 rejection of claim 1, Grim does not disclose these elements of claim 22. Thus, Grim does not disclose each element of claim 22. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of this claim.

In regards to claims 2-5, 7-21, and 23, these claims depend from independent claims 1 and 22, respectively, and incorporate the limitations thereof. The Examiner's argument assumes that Grim discloses all elements of claims 1 and 22 which are incorporated in dependent claims 2-5, 7-21, and 23. However, as discussed above, Grim does not disclose all the limitations of claims 1 and 22. Therefore, claims 2-5, 7-21, and 23 are not obvious in view of Grim. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejections of claims 2-5, 7-21, and 23 on this basis.

III. Additional Amendments to the Claims

The Applicants have made additional amendments to claims 1-5 and 7-23 to further clarify these claims and to cure informality issues not cited by the Examiner. The Applicants submit that these amendments do not add new subject matter to the Application. Accordingly,

the Applicants respectfully request entry of these amendments at the Examiner's earliest convenience.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

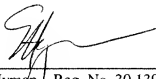
PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on April 14, 2009, the Applicants respectfully petition Commissioner for a one (1) month extension of time, extending the period for response to August 14, 2009. The amount of \$130.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(1) large entity will be charged to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

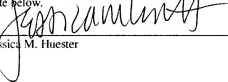
Dated: 7/13/09

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date below.


Jessica M. Huester

2009-08-13
Date